

Remarks/Arguments:

This is a response to the Office Action mailed May 20, 2003, the period for response to which has been extended from August 20, 2003 to November 20, 2003. Presently, claims 1, 4, 8-10, 13-15, 18 and 22 are pending and have been rejected by the Examiner.

I. Claims 1, 4, 8-10, 13-15, 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,769,236 to Panoz et al. in view of the Physicians Desk Reference

The Examiner has rejected claims 1, 4, 8-10, 13-15, 18 and 22 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,769,236 to Panoz et al. (the '236 patent) in view of the Physicians Desk Reference (the PDR).

The Examiner states that the '236 patent discloses spraying an amorphous form of active in the presence of a stabilizer and a crystal forming inhibiting agent, wherein in one embodiment the inhibiting agent is constituted by the mixture of polyethylene glycol and polyvinylpyrrolidone. Further, the Examiner states that the PDR discloses that fenofibrate is a known active agent with success in regulating lipid content.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Applicant note that the Examiner has failed to establish a *prima facie* case of obviousness. Within the '236 patent in view of the PDR there is no motivation to use hydroxypropylmethylcellulose (HPMC) as a crystal forming inhibiting agent, there is no expectation of success that hydroxypropylmethylcellulose (HPMC) as a crystal forming inhibiting agent would work, nor are all the presently claimed limitations taught or suggested in said '236 patent.

In this case, claims 1, 8, 9 and 13 have been amended and claim 4 has been canceled. Amended claims 1 and 13 have support in the originally filed claims 1 and 13 as well as the entire specification, and no new matter is introduced by said amendments.

Therefore, Applicants respectfully request the Examiner to withdraw the rejection of claims 1, 4, 8-10, 13-15, 18 and 22. Further, Applicants maintain that claims 1, 8-10, 13-15, 18 and 22 are now in condition for allowance and request that said claims be allowed.

Conclusion

Applicant maintains that claims 1, 8-10, 13-15, 18 and 22 are in condition for allowance which action is respectfully requested. If the Examiner has any issues remaining, a telephone call is requested to resolve said issues.

A three month extension is deemed necessary by the Applicants. Therefore, Applicants hereby expressly authorize the Commissioner to charge the appropriate fee of \$930.00 (or other amount as required) to Deposit Account No. 01-0025.

Respectfully submitted,
Fort, et al.



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